

21024 RPO Princess
Kingston ON K7L 5P5
Canada

Ajit Pai, Chairman
Federal Communications Commission
445 12th St SW
Washington DC 20554 USA

cc: Hon. Chrystia Freeland, MP, Minister of Foreign Affairs, and:
cc: Hon. Navdeep Bains, MP, Minister of Innovation, Science and Economic Development,
House of Commons, Ottawa-Hull K1A 0A6 Canada

19 September 2017

Re: US FCC Dockets WC 17-192 and CC 95-155

I am writing in response to FCC-CIRC17-09-06, Notice of Proposed Rulemaking in the matter of “Toll Free Assignment Modernization” and “Toll Free Service Access Codes” posted at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0907/DOC-346588A1.pdf

I am in the riding of “Kingston and the Islands” in southeastern Ontario, Canada (NPA 613).

Canada is the largest country on Earth to lack its own country code for telephone numbers; for historic reasons the former Bell System countries and their downlinks continue to share a North American Numbering Plan, country code +1. Toll-free numbers, instead of working nationally in just the country in which they were issued, are drawn from a shared pool “SMS/800” administered by Sonos Inc. in the United States of America. Reserving a number in one NANP country typically reserves it in all.

While it is possible to issue the same freephone number to different subscribers in each country outside the established “responsible organisation” system (CrimeStoppers at +1-800-222-TIPS is the one example which comes to mind), this is currently rarely done.

Canada was originally assigned a fixed list of prefixes for freephone numbers; these were abolished in favour of “RespOrgs”, so-called “responsible organisations” drawing numbers from an internationally-shared pool, in the 1990s. Most original resporgs were legitimate telcos or long-distance carriers acquiring toll-free numbers to provide telephone service to their own arms-length paid subscribers.

Unfortunately, there are a few US resporgs who are anything but “responsible” in any respectful sense of the terminology. Instead of requesting individual numbers on behalf of individual subscribers as they’re needed, they’ve reserved millions of freephone numbers for themselves or for other companies under common ownership. Many of these numbers merely respond as prerecorded advertisements for anything from phone sex to overpriced “directory assistance” services, many of them scams.

As there are only 7.8 million numbers in an entire area code, and multiple companies are abusing the system with captive RespOrgs which offer no services to the general public, the supply of freephone numbers (and memorable pattern or “vanity” numbers in particular) is being rapidly depleted, leading to an endless stream of new toll-free area codes like 1-888, 877, 866, 855, 844 and now 833.

These were implemented by the US Federal Communications Commission with little consultation with any of the other affected nations. To its credit, the Commission introduced federal regulations prohibiting “hoarding, brokering or warehousing toll-free numbers” where RespOrgs are expected to have a valid subscriber for each number they take. Unfortunately, the FCC does not effectively enforce these regulations; their latest proposal appears to undermine or destroy these already-weak safeguards.

Individual small businesses, finding 1-800-(companyname) for their company (or even any true 1-800 number at all) to be long gone, are therefore routinely exiled into newer area codes like 1-844.

This is leading to consumer confusion; when General Motors advertised +1-877-CLUNKER for an “adieu bazou”-style vehicle scrappage scheme in the Great Recession, +1-800-CLUNKER was flooded with more than a thousand calls a day. Consumers expect 1-800, the code that worked for forty years, to be the correct number... and there are plenty of scammers eager to exploit their error.

There are also some really blatant loopholes.

One of the worst is called “shared use”: instead of issuing a freephone number which the subscriber is free to move to the carrier of their choice, shared use leaves control of a number in the hands of a speculator who rents “use” of the number for inbound calls from one area code at a time. One former Mercedes dealer managed to grab +1-800-MERCEDES and charge other individual dealers in each community inflated prices to receive calls on the number; Daimler-Benz were provided no recourse other than to concede defeat and advertise some other number (they went with +1-800-FOR-MERC).

Another loophole is that the RespOrg is not required to make its services available to all on a reasonable and non-discriminatory basis. In some cases, the RespOrg is representing multiple subscribers – all of whom are requesting the same numbers. In others, it’s inviting users to submit requests to websites like “844capture” and then attempting to obtain the same numbers for themselves.

In some cases, a captive RespOrg has no “subscribers” or the lone subscriber is an entity under common ownership. For instance, if a “jennysearch.com” wants to grab Jenny’s number (867-5309) in the first minute after each new toll-free area code opens, “first-come, first-served” as used in the 855 and 844 launches would let them do exactly that merely by registering one (or more) captive RespOrgs.

When you are the “phone company”, even if you have no arms-length subscribers, your requests go first. Which requests go last? Individual users of small Internet telephone companies like Swiftvox (voip.ms) in Terrebonne or les.net in Winnipeg; as these companies get their numbers from upstream carriers (Navigata, ISP Telecom and the like), they’re left waiting silently at the back of the line, with the rest of us. That’s unfortunate, as these companies have actual arms-length paying subscribers.

The FCC realises that, due to widespread abuse, the “first-come, first-served” model is utterly broken. Unfortunately, their proposed fix makes the problems worse both by undermining the protections against hoarding, brokering and warehousing numbers and by putting all of the most-wanted numbers up for auction to the highest bidder.

Their rationale appears to be that Australian regulator ACMA tried an auction of “smart numbers” in which a few short freephone or shared-cost numbers (like 1-300-TAXI) garnered premium prices.

Unfortunately, the ACMA analogy is invalid for various reasons:

- Auctioning numbers creates the expectation that registrants have a property interest in the subscribed number, something which has been very carefully avoided over the years. That’s a problem if a telco wants or needs to change a block of numbers for any reason (as they did with the NPA 416/905, 514/450, 604/250 and 403/780 area code splits in the 1990s).
- Millions of valuable numbers are already in the hands of captive RespOrgs acting on behalf of various “misdirected marketing” schemes. By one estimate, several million numbers with a potential value of \$US 1 billion are being held by one company which controls six captive Philadelphia respsorgs. A million more numbers are being held by the folks behind the bogus “This is mobile directory service. Please call 101-XXXX-0...” scam (which sends a call to another carrier, \$5 for the first minute). There are others who are hoarding and warehousing huge quantities of numbers for various purposes, such as listing a different freephone number on every publication of an advertisement for “tracking purposes” to measure response. Some may be warehousing numbers for illegal resale. Anything which allows these firms (or their lawyers) to claim a proprietary ownership in numbers exposes the FCC to potentially billion-dollar lawsuits should they attempt to enforce their own regulations to forfeit the numbers in question.
- While ACMA’s regulations on hoarding, brokering and warehousing numbers look on their face to be like their US counterparts, the US FCC has failed for years to effectively enforce these regulations against a few abusive respsorgs who are backed by money, lawyers and a complete lack of scruples. Worse yet, the FCC proposes to undermine or repeal these regulations, effectively announcing an open season on consumers and small businesses.
- Anything ACMA does (or fails to do) only affects Australians, the people to whom it is ultimately accountable. The same is not true in the North American Numbering Plan. As long as Canada, Bermuda and Caribbean points with +1 numbering are largely willing to treat a reservation of 1-800-NXX-XXXX in the US respsorg system as reserving the same number when dialled from every other NANP country, FCC policymaking will adversely affect telephone subscribers in other nations.
- Recent FCC policy on other issues, ranging from net neutrality to the sale of subscriber browser history by Internet service providers, has been badly lacking of late in terms of consumer protection. It is not fair for Canadians to expect a regulatory body in another country to look out for our interests as that is simply not their mandate. We wouldn’t ask ACMA to protect Canadian consumers as they’re Australian, why would we ask the FCC to do so if they’re US?
- Shared use is not widely abused in Australia, as a small and largely homogenous market with an effective regulator. In the US, it’s led to many problems as it creates a middleman who claims that it (not the end user) is the “subscriber” - leaving the user “renting” a number in one community at inflated prices. A variant of this scam is for an e-fax gateway operator to claim that it is the “subscriber” for its customers’ numbers, is using them “to provide an Internet fax service” and refuses to let the actual subscriber take their number and switch to another carrier. Companies operating these schemes have deep pockets and could act as “ticket scalpers” by outbidding small business for the most memorable or most marketable numbers.
- If a number like 1-833-LAWYERS goes to the highest bidder? That would bring out the worst possible case in everything. Dial the number from the smouldering oil-soaked wreckage of Lac-Mégantic (NPA 819) and certainly it won’t reach the “Barreau du Québec” and even more certainly won’t reach “l’aide juridique”. It goes to the highest bidder, and that means the entity most willing to pay and pay big – ambulance chasers who work on contingency to recruit

plaintiffs, sell the cases on to other lawyers and pocket a hefty percentage of what should have been the victim's compensation... for themselves. Speak out against these folks and expect a spurious lawsuit. Many victims of disasters are re-victimised by these firms, who come in droves in the wake of a high-profile tragedy. The solely-economic reasoning that this "highest bidder" simply wanted the number more will be little consolation if it's used in this manner.

- Even if government does intervene to protect the public interest, results have been mixed. If a non-profit charity and a government agency both decide they'd like 1-800-SUICIDE for a hotline, guess who loses? It won't be the government... even if a US taxpayer-funded line likely won't be dialable from Canada or other NANP countries at all.
- Likewise, the decision of what to do with a number like 1-800-RED-CROSS will be made in Washington DC and not in each individual country for the calls originating from that country. To its credit, the FCC did take that one number away from a "shared use" bandit who was looking to rent or sell the number to individual Red Cross local chapters during Hurricane Katrina – effectively the opposite outcome to the 1-800-MERCEDES stunt. Unfortunately, no one thought to ask regulators in any of the other NANP countries how these calls should be handled if originated from outside the US. Dial 1-800-REDCROSS from Lac-Mégantic (NPA 819) and the call will go through... but to the American Red Cross and not to "la Croix Rouge canadienne" (one would need to call +1-800-418-1111 to reach redcross.ca).

Certainly, I'm disappointed that the FCC has introduced this notice of proposed rule-making without any apparent consultation with other NANP countries. While it's not the first time US federal authorities have attempted to export ill-conceived or flawed policy to other nations (the use of FATCA to bully other nations into undermining banking privacy is one example, the use of trade negotiations to foist anti-consumer modifications to copyright law is another) usually there's at least some pretext of discussion. I don't see that this time.

Indeed, decisions made by the Commission often do impact Canada adversely, even though we are a sovereign Commonwealth dominion and not part of the USA. For instance, WPBS-DT 41 is on prime 600MHz spectrum that US mobile telephone providers would pay dearly to take away from OTA TV viewers. The FCC proposals for spectrum repacking will move that station to DT 26, which is currently in use by Belleville, Ontario educational broadcaster CICO-DT-53. In theory, Belleville could move to another channel; in practice, with no funding provided to cash-strapped TVOntario to make this move, yet another educational TV transmitter will go dark – despite best efforts at international co-ordination in these matters. It's profitable for the mobile telephone company, it's profitable for the US government and their favourite auction pastime, too bad it doesn't serve the public interest in tiny Belleville.

This latest move is more of the same, except that it affects the entire 1-800 area code and its overlays, including 1-833 as the latest addition, nationwide. The highest bidder wins, the public interest loses.

I see no tangible benefits to the public in the FCC's current proposal for actual subscribers anywhere.

If the revenue from the auction goes to subsidising toll-free number administration, that might bring the cost of freephone numbers down for the entities who register millions of these numbers. That'd be the misdial marketers, the "shared use" speculators and the captive RespOrgs who are under common ownership with them. The individual toll-free subscriber will ultimately pay more, not less, for a freephone service which is less useful as the hoarding, brokering and warehousing of good numbers pushes real small-business subscribers out into 844, 833 or whatever the area code of the week is next week. 1-822 anyone?